

Amendment No. 5 to SB3431

McNally
Signature of Sponsor

AMEND Senate Bill No. 3431

House Bill No. 2813*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. The General Assembly finds and declares that deterrence and punishment of violent crime is a matter of compelling public interest that requires the highest priority in allocating scarce public resources for imprisonment. To make prison space available to ensure that these violent offenders serve a sentence of sufficient length to remove them as a threat to society and to deter others from committing these offenses, it is in the public's best interest that certain non-violent property offenders currently serving prison sentences for less serious offenses be given alternative sentences not involving incarceration. By doing so, the property offenders are able to work in order to pay restitution to the victims of their crimes without threatening public safety thereby permitting longer sentences for those offenders who do threaten public safety.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following as a new section:

Section 40-35-122

(a) Notwithstanding any provision of law to the contrary, except as provided in subsection (b), the judge sentencing a defendant who commits a non-violent property offense, as defined in subsection (c), on or after July 1, 2010, shall not be authorized to impose the sentencing alternatives of continuous confinement in a local jail or the department of correction as authorized by § 40-

35-104(c)(5), (c)(6), or (c)(8). However, the judge may sentence the defendant to any of the other sentencing alternatives authorized by § 40-35-104(c), which include, but are not limited to, periodic confinement, work release, community corrections, probation, or judicial diversion.

(b) A defendant convicted of an offense listed in subsection (c) may be sentenced to a period of continuous confinement if the sentencing court determines:

(1)

(A) The defendant has one (1) or more previous convictions, at least one (1) of which is for an offense listed in subsection (c); and

(B) Using the applicable criteria, the available sentencing alternatives set out in § 40-35-104(c) that do not involve continuous incarceration are unsuitable for the defendant.

(2) As used in this subsection, "previous conviction" means a conviction which occurred at any time prior to sentencing for the instant offense. "Previous conviction" does not include a conviction which resulted from the same trial or plea agreement as the conviction for the instant offense or a conviction for an offense that was committed during the same twenty-four (24) hour period as the instant offense.

(c) As used in this section, a "non-violent property offense" is:

(1) Forgery under § 39-14-114, where the amount of the forgery is less than one thousand dollars (\$1,000);

(2) Attempted forgery under §§ 39-12-101 and 39-14-114, where the amount of the forgery is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(3) Criminal simulation under § 39-14-115, where the amount is less than one thousand dollars (\$1,000) ;

(4) Attempted criminal simulation under §§ 39-12-101 and 39-14-115, where the amount is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(5) Facilitating criminal simulation under §§ 39-11-403 and 39-14-115, where the amount is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(6) Felony theft of services under § 39-14-104, where the amount of the theft is less than one thousand dollars (\$1,000);

(7) Shoplifting under §§ 39-14-103 or 39-14-146, where the amount taken is less than one thousand dollars (\$1,000);

(8) Felony fraudulent use of a credit card under § 39-14-118, where the amount of the theft is less than one thousand dollars (\$1,000);

(9) Felony passing worthless checks under § 39-14-121 where the amount of the check is less than one thousand dollars (\$1,000);

(10) Passing forged checks under § 39-14-114, where the amount of the forgery is less than one thousand dollars (\$1,000);

(11) Felony theft of property under § 39-14-103, where the amount of the theft is less than one thousand dollars (\$1,000);

(12) Attempted theft of property under §§ 39-12-101 and 39-14-103, where the amount of the attempted theft is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(13) Facilitating the theft of property under §§ 39-11-403 and 39-14-103, where the amount of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(14) Conspiracy to commit theft of property under §§ 39-12-103 and 39-14-103, where the amount of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(15) Felony vandalism under § 39-14-408, where the amount of the vandalism is less than one thousand dollars (\$1,000);

(16) Fraudulent transfer of a motor vehicle under § 39-14-147;

(17) Attempted burglary other than a habitation under §§ 39-12-101 and 39-14-402(a)(1), (a)(2) or (a)(3);

(18) Burglary of an auto under § 39-14-402(a)(4); and

(19) Burning personal property under § 39-14-303.

SECTION 3. Tennessee Code Annotated, Section 40-35-501, is amended by designating subdivision (k)(1) as (k)(2) and by adding the following new (k)(1):

There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402(a)(1), on or after July 1, 2010, until the person has served eighty-nine percent (89%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy-four percent (74%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

SECTION 4. This act shall take effect July 1, 2010, the public welfare requiring it.